

for the Western District of Pennsylvania

United States of America,

FILED

Frederick Banks,

Defendant

15-CR-168

03-CR-275

04-CR-176

FEB - 4 2016

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIANOTICE of Appeal of
ORAL ORDER of Magistrate Judge
to U.S. District Judge

Defendant Frederick Banks hereby gives notice to the Court and the parties that he appeals the oral orders of the Magistrate Judge denying his subject matter jurisdiction challenges to the U.S. District Judge entered on or about 1/20/16 at the Superseding Indictment arraignment.

1. Defendant under Rule 12 of the Federal Rules of Criminal Procedure challenged in open court the Court's jurisdiction and the Superseding Indictment. The Magistrate Judge denied the motion and stated that it was a matter for Judge Hornum. The magistrate Judge erred and abused her discretion as Under Fed. R. Crim. Proc. 12 a challenge to the Court's jurisdiction can be raised at any time. See *Pon v. United States* (2nd Cir.); Fed. R. Crim. Proc. 12. As a result the District Judge should reverse and remand the order of the magistrate and vacate it so that the magistrate can consider his challenge to the Superseding Indictment for lack of subject matter jurisdiction and for failure to state an offense. Defendant also seeks reversal and vacatur of the Magistrate order denying a bond hearing because "this was not scheduled as a Bond hearing." The Magistrate Judge should have held the Bond hearing and released Defendant on Bond.

2. Defendant notes that the government brought Counts 1-6 at a complete detriment to the U.S. Taxpayer as these counts Defendant already served 20 months on in *USA v. Banks*, 04-CR-176.

Also, as to Count 7 the false swearing count there is no interstate commerce element is. The Court lacks subject matter jurisdiction over Count 7 because the 2241 Petition did not travel in interstate commerce. As a result Count 7 must be dismissed. (The 2241 "next friend" Petition to 28 USC § 2242 was purportedly filed in Pittsburgh, PA and sent from a Pittsburgh, PA zip code).

Wherefore, the foregoing should be granted.

Respectfully Submitted,

Frederick Banks
120759, ACS
950 Second Ave
Pittsburgh, PA 15219

Defendant

Defendant also moved for sanctions against Allegheny County Jail they have not been giving him court ordered access to the Laptop Computer Discovery and Moved for an order requiring the Jail to allow him to bring the Computer to Court. In addition Defendant moved for sanctions because some of his legal papers and other items were confiscated on or about 1/9/16 and not returned and the Jail is not delivering his legal mail to him.

Certificate of Service

I hereby certify that on the 31st day of January, 2016 I served a true and correct copy of the foregoing by mail delivery upon the following;

Office of the U.S. Atty
1000 US Courthouse
700 Grant St.
Pittsburgh, PA 15219

Frederick Banks